

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHEAL A. SUBENKO,

PLAINTIFF,

VS.

COMMONWEALTH,

DEFENDANT'S

AFFIDAVIT OF WALTER A. WHEELER, TO
JUDGE-MAGISTRATE: GEORGE A. O'TOOLE, JR.

WALTER A. WHEELER, BEING DULY SWEORN
ACCORDING TO LAW UPON HIS OATH DEPOSES AND STATES
THE FOLLOWING FACTS ON FIRST HAND KNOWLEDGE
AND PERSONAL OBSERVATION AND I ASSERT THAT
I AM COMPETENT AND ABLE TO TESTIFY TO THE
SAME.

1. I AM THE JAIL HOUSE LAWYER, WHO HAS
WRITTEN EVERY LEGAL DOCUMENT WHICH HAS
BEEN FILED ON BEHALF OF THE PLAINTIFF,
MICHEAL A. SUBENKO.
2. I AM PRESENTLY INCARCERATED, UNDER THE
CONTROL OF THE MASSACHUSETTS DEPARTMENT OF
CORRECTION AND CURRENTLY CONFINED AT M.C.F.
NORFOLK, SMU, CII, 331, P.O. BOX, 43, 2 CLARK
STREET, NORFOLK, MA, CODE: CO43.
3. ON JANUARY 30, 2004 WHICH IS THE DATE I
AM MAKING THIS AFFIDAVIT TO: JUDGE-MAGISTRATE
GEORGE A. O'TOOLE, JR. OF MASSACHUSETTS UNITED
STATES DISTRICT COURT.
4. I AM GIVING ADMISSIONS TO THE FACTS THAT
PLAINTIFF, MICHEAL A. SUBENKO, IS AN ILLITERATE
WITH ONLY A EIGHTH GRADE EDUCATION, PLUS,
WITH MENTAL DISORDERS, (1.) ORGANIC MENTAL
DISORDER, NO(S), 294.80 (2.) ADHA, 314.01, (3.) DEP-
RESSIVE DISORDER, NO(S), 311.00, (4.) ANTI SOCIAL PERSON-
ALITY, DISORDER, NO(S), 301.70, (5.) SEIZURE DISORDER,
(6.) HEAD TRAUMA, FROM, PEMBROKE HOSPITAL,
RECORDS, HERETO ATTACHED.

5. I SWEAR UNDER THE PAINS AND PENALTIES OF PERJURY THAT PLAINTIFF MICHAEL A. SUBLENKO, IS IN SERIOUS NEED OF COUNSEL.

6. I ASSERT THAT THE PLAINTIFF MEETS THE STANDARD'S OF APPOINTMENT OF COUNSEL IN THIS ACTION: UNDER, COOKISH V. CUNNINGHAM, 787.F.2d.115.(11. ST. CIR. 1986); MORESO: UNDER, TABRON V. GRACE, 6.F.3d.147(3rd.CIR.1993), AMONG THE FACTORS THAT THE "TABRON" COURT HELD SHOULD BE CONSIDERED WHEN DECIDING WHETHER TO APPOINT COUNSEL IS:

- A. THE MERITS OF THE CLAIM;
- B. THE PLAINTIFF'S ABILITY TO PRESENT HIS/HER CASE, INCLUDING HIS/HER EDUCATION.
- C. LITERACY, PRIOR WORK EXPERIENCE, AND ANY PRIOR LITIGATION EXPERIENCE.
- D. THE PLAINTIFF'S ABILITY TO READ, WRITE AND UNDERSTAND ENGLISH.
- E. THE PLAINTIFF'S CUSTODY STATUS AND THE CONSTRAINTS PLACED ON HIM/HER AS A RESULT OF CONFINEMENT;
- F. THE COMPLEXITY OF THE LEGAL ISSUES INVOLVED;
- G. THE AMOUNT OF FACTUAL INVESTIGATION AND DISCOVERY NECESSARY TO PROVE THE CLAIM.

7. I ASSERT THAT, MICHAEL A. SUBLENKO, WAS ASSAULTED BY CORRECTIONAL OFFICER'S AT, M.C.F. NORFOLK, ON NOVEMBER 10, 2003, AND HAS BEEN TO SEGREGATION CONFINEMENT SINCE THAT DATE.

8. I AM WILLING TO TESTIFY THAT MICHAEL A. SUBLENKO, IS UNABLE TO REPRESENT HIMSELF IN THIS ACTION, MORESO, HE NEEDS PSYCHIATRIC EXAMINATIONS AND COUNSELING.

CONCLUSION.

WHEREFORE, WALTER A. WHEELER, PRAYS THIS HONORABLE COURT USE THIS AFFIDAVIT IN PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL IN THE ABOVE ACTION.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 28 TH DAY OF JANUARY 2004.

Walter A. Wheeler W-8020
WALTER A. WHEELER W-8020

DATED: January 30, 2004

RESPECTFULLY SUBMITTED
BY PLAINTIFF, PRO-SE,

Michael Subenko VI-6886-1
MICHAEL A. SUBENKO, VI-6886-1
M.C.T. NORFOLK, VA. CIV. 332
P.O. BOX 413, 2 CLARK STREET,
NORFOLK, VA. 23509-0043.

CERTIFICATE OF SERVICE

I, MICHAEL A. SUBENKO, HEREBY CERTIFY THAT
ON THIS DATE I SERVED A TRUE COPY OF
THE ABOVE DOCUMENT, BY MAILING, POSTAGE
PREPAID, UPON THE DEFENDANT'S ATTORNEY'S OF
RECORD.

DATED: January 30, 2004.

Michael Subenko
MICHAEL A. SUBENKO.